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ably with truth, that almost all the better portions of the residence section are occupied exclusively by whites. The negro therefore, however cultivated or successful, must always remain in an inferior social and physical environment. The difference in degree of discrimination from the railway car and school cases is such as to amount practically to a difference in kind. It is true that, under the Fourteenth Amendment, discrimination may be justified on reasonable exercise of the police power,[7] but it is clear that any discrimination on the ground of race alone is arbitrary and unconstitutional. Laundry regulations aimed at the Chinese alone are clearly in conflict with the Amendment.[8] Similarly it would seem that those statutes which discriminate, as regards the suffrage, in favor of the lineal descendants of those who voted in 1866 is in substance a discrimination against the negro, just because of his race and hence unconstitutional.[9] It may be argued that such discrimination as results from the Baltimore ordinance can be justified as an exercise of the police power. This cannot be based on the theory that the negro being more unsanitary affects the health of the white sections. It cannot be contended that because a man is a negro he is therefore unsanitary. Nor can the preserving of realty values in the "white" sections be within the exercise of the police power. The danger of racial intermingling is probably not rendered appreciably greater by residence in the same block. Hence the only plausible ground for justifying the ordinance is the danger of race friction. It is fair to assume that both races are equally at fault in the trouble which arises from race prejudice. It is questionable then, in view of the intent of the Fourteenth Amendment, whether it is possible to consider reasonable a regulation by which a negro, no matter what his individual characteristics, is confined because of his color to an environment rendered inferior to that open to a white man, by reason of the general standards of the negro race and their present status in the community.

Granting that the preserving of order could possibly justify such segregation, and admitting that a feasible method of segregating in an established community without discrimination is impossible,[10] it seems doubtful whether such necessity exists in Baltimore as to fairly bring such regulations within the police power.

TERRITORIAL APPLICATION OF WORKMEN'S COMPENSATION ACTS. — The popularity of the economic principles involved [1] has caused many states to adopt Workmen's Compensation Acts, and makes further enactments probable. It becomes important to inquire whether

[7] Yick Wo *v.* Hopkins, 118 U. S. 356. Where regulations are proper because of the nature of the occupation, they are none the less proper because the Chinese are alone affected. Barbier *v.* Connolly, 113 U. S. 27; Soon Hing *v.* Crowley, 113 U. S. 703.

[8] See 26 HARV. L. REV. 49–53 for a discussion of such statutes as affected by the Fourteenth Amendment.

[9] Were a new city to be plotted, regulations which set apart equally advantageous separate parts of the city for the whites and for the negroes would be less objectionable.

[1] 25 HARV. L. REV. 129, 328.

those already enacted can apply to injuries received outside of the enacting state, and, if so, whether such extraterritorial application is desirable. Some acts merely change the common-law tort liability of the employer by taking away defenses such as contributory negligence and assumption of risk, or by substituting a scale of damages for the common-law jury verdict.[2] Acts containing only these features can have no extraterritorial effect, since it is well settled that tort rights are determined by the law of the place where the injury occurs.[3]

But many statutes include provisions giving injured employees rights against some separate fund.[4] The employee's right may be that of a beneficiary of an actual contract between the employer and an insurance company.[5] Or it may be a right to payments from a fund created by the state and supported by compulsory contributions[6] from the employer or from both employer and employee. The duty of the state or insurance company to pay is not based on any causal or guilty relation to the accident, and so is dissimilar to rights *ex delicto*. Where premiums are compulsory there is no actual contract, but the money has been paid to the use of the injured employee, and it may be said to give him a right analogous to one in quasi-contract, or a right of a joint *cestui* in place of the right *ex delicto*. The extraterritorial effect of such a right would seem to depend upon the intention of the statute.

Although the power of the legislature to give extraterritorial effect to the act was assumed, a recent Massachusetts case construed the act of that state as not contemplating such effect. The court felt that any act having extraterritorial effect would be inadvisable, because of the difficult questions of conflict of laws to which it would give rise. *In re American Mutual Liability Ins. Co.*, 102 N. E. 693 (Mass.). Extraterritorial effect would seem to be desirable in certain cases. Thus, if the duties of the employee in an employment within the enacting state only occasionally take him over the state line, it would be best to give him there the same protection he would enjoy within the state, since, even if the other state so desired, it could hardly insure such temporary and

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[2] BOYD, WORKMEN'S COMPENSATION, p. 11.

[3] C. & E. I. R. Co. *v.* Rouse, 178 Ill. 132, 52 N. E. 951; Walsh *v.* N. Y. & N. E. R. Co., 160 Mass. 571, 36 N. E. 584. 2 WHARTON, CONFLICT OF LAWS, 3 ed., p. 1098. But see p. 1104, note 9. Even though one of the parties has an option at the inception of the employment to substitute a fixed scale of damages for the common-law jury verdict, there would be no extraterritorial effect. But if the parties actually contracted for a certain mode of compensation, that would bar any action *ex delicto*.

[4] WASHINGTON LAWS, 1911, p. 345. The various acts are classified in 1 BOYD, WORKMEN'S COMPENSATION, p. 11. The insurance acts give rights to the employee, and must be distinguished from the insurance of employer's liability. The MASS. ACT, 1911, chap. 751, is classified in BOYD, WORKMEN'S COMPENSATION, p. 13, as giving the employee direct rights against the insurance fund and discharging the employer on payment of premiums. But it is not clear from the act that this is so.

[5] See *In re* American Mutuality Liability Ins. Co., 102 N. E. 693, 694. The court says, "He is the beneficiary under a contract between the employer and insurer." If "beneficiary" here means what it does in the Washington act, the employee himself has a right against the fund. See WASHINGTON LAWS, 1911, p. 348. If, however, the employee's right against the fund is only derivative from his right against the employer, it is not an insurance feature resulting in a right to insurance in the employee.

[6] A statute compelling employers to insure all employees was declared constitutional in State *v.* Clausen, 65 Wash. 156, 117 Pac. 1101. See also 25 HARV. L. REV. 129.

occasional work in a manner fair to all parties. So also would such effect be desirable where a foreign state has no compensation act.

The objection might be made to such extraterritorial effect that if an employment is regularly in two states which have compulsory insurance plans, both might compel insurance for the whole employment, and the employer would be charged double premiums. Such an objection would, however, be equally applicable where acts were merely territorial in effect, because in most statutes premiums are based, not on time of work, but on the type of employment and amount of wages.[7] Extraterritorial effect might conceivably result in recovery of insurance in both states on the analogy of accident insurance law. But this is not objectionable as unduly enriching the employee, since the pecuniary damage is so conjectural that it is perhaps impossible to ever say that the insured is fully indemnified by the recovery of money.[8]

It would seem that there would not be the objection that extraterritorial effect would allow a recovery of insurance in one state and *ex delicto* in another, because the recovery of insurance, even under a compulsory act, would seem to impliedly involve the release of the right *ex delicto*. If, however, an employee under a compulsory act should choose not to enforce his insurance right, he would certainly be free to exercise his right *ex delicto* in another state.[9] The employer would thus be a loser to the amount of the premium which was to cover that particular extraterritorial risk. This difficulty would not arise under acts the application of which is optional and which involve an express relinquishment of other rights.[10]

Another difficulty is that compelling the employer to pay premiums for accidents happening in states having no compensation act is depriving him of defenses to which he is entitled. This is justifiable, however, on the economic theory of the Workmen's Compensation Acts, which is that the burden of accidents is being put on the consumer by means of the employer's absolute liability.[11] There may be other difficulties due to the provisions of different acts. And since the cases where extraterritorial effect is desirable will cease to arise as the adoption of such acts becomes universal, it is perhaps wiser to confine their application to territorial accidents.

VALIDITY OF CONTRACT INVOLVING BREACH OF PRIOR CONTRACT. — It is generally recognized that intentionally to induce a breach of con-

[7] An equitable result could be reached in either case by each state charging in proportion to the risk within its borders. This is analogous to the plan of taxation in Pullman Co. *v.* Penn, 141 U. S. 18.

[8] See 26 HARV. L. REV. 377. *Cf.* Ætna Life Ins. Co. *v.* Parker, 96 Tex. 287, 72 S. W. 168. *Cf. contra*, 2 MAY, INSURANCE, 4 ed., p. 1051.

[9] Schweitzer *v.* Hamburg American Freight Co., 78 Misc. Rep. 448, 138 N. Y. Supp. 944, is not *contra*. It relies on the doctrine that the relation of master and servant having its inception in a contract is governed by the law where it was made. This is anomalous. See 2 WHARTON, CONFLICT OF LAWS, 3 ed., pp. 1098, 1103. It is indulging in fictions unless the employee has actually contracted away his rights *ex delicto*.

[10] 2 WHARTON, CONFLICT OF LAWS, 3 ed., p. 1105. Since an insurance right is substituted, such a defense would scarcely be against public policy. See 26 HARV. L. REV. 459. An example of such an act is MASS. ACTS, 1911, chap. 751, Part I, § 5.

[11] 25 HARV. L. REV. 131.